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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Federal Communications Commission
Office of the Secretary

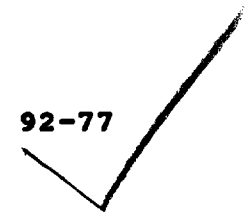
ORIGINAL
FILE

In the matter of

Billed Party Preference
for 0+ InterLATA Calls

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CC Docket No. 92-77



REPLY COMMENTS OF AMERICAN EXPRESS COMPANY

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SUMMARY

The Commission's proposal to require the implementation of billed party preference for 0+ and 0-calling could be either a boon or a disaster, depending on how the Commission handles several core issues. At the outset, the Commission must be certain that it has reliable information regarding the costs of the service -- not only initial implementation costs, but also consumer costs, card-issuer costs and potential costs to competition -- and takes actions to minimize those costs.

In particular, the costs to both consumers and competition will justify rejection of BPP unless commercial credit and charge cards are accorded full parity with carrier-issued cards. Users of commercial cards should not have to dial extra digits or special codes, or be subjected to LEC-imposed delays, simply because of their choice of billing mechanism. Parity for commercial cards is necessary to protect the right of consumers to choose the billing mechanism that is best for them. Such parity is also necessary to assure that the network complies with international standards regarding card numbering, and to prevent the LECs from establishing a new anticompetitive billing bottleneck.

Two other measures are necessary to enable users to choose carriers easily, reliably and without confusion, which is the fundamental goal of this proceeding. First,

the Commission must require essentially simultaneous rollout of BPP nationwide by requiring that all LECs implement it within a specified -- and short -- time window. Second, the Commission must preempt inconsistent state regulation of BPP. Both steps are necessary for callers to know they have only a single uniform set of procedures to follow, wherever they are, to be connected with the interstate or intrastate carrier they have chosen. Without such uniformity, BPP is effectively worthless.

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REPLY COMMENTS OF AMERICAN EXPRESS COMPANY

American Express Company (American Express) hereby submits its reply comments in response to the Notice of Proposed Rulemaking released in the above-captioned proceeding on May 8, 1992.

I. INTRODUCTION.

The establishment of billed party preference (BPP) for 0+ and 0- calling is fraught with both promise and danger. Implemented properly, it could increase consumer choice, reduce consumer confusion and move the network a step toward the important policy goals of openness and competitiveness. Implemented improperly, however, it would enable the local exchange carriers (LECs) to establish another bottleneck with inherent harm to competition; reduce consumer choices by favoring carrier-issued cards over other payment mechanisms; further close the network by requiring payment mechanisms to use numbering plans inconsistent with international standards; and aggravate customer confusion. Unfortunately, a number of carriers have proposed that BPP be implemented in a fashion that would have precisely these effects.

Three measures are essential to assure that the promise, and not the danger of billed party preference is realized. They are:

- The Commission must mandate that BPP is to be implemented so that callers may use commercial credit and charge cards to make BPP 0+ calls -- with no disadvantage in service or dialing requirements as compared with callers using carrier-issued cards. This will maintain and indeed enhance existing consumer choices of billing mechanisms, increase competition among providers of billing services, and assure that the LECs are not able to close the network by establishing billing procedures that violate international standards.
- The Commission must mandate nationwide uniformity among all LECs in their implementation of BPP, and should require that all LECs implement BPP within a short window no longer than six months from start to finish. If some LECs have BPP in place early and others much later (or not at all), consumer confusion will be dramatically increased rather than reduced -- a result diametrically opposed to the Commission's intent.
- By the same token, consumer confusion will be compounded if interLATA BPP is implemented in a different manner than intraLATA BPP. The Commission should therefore preempt inconsistent state regulation of BPP. American Express believes the Commission has the authority to preempt state regulation in this manner, and urges it to exercise this authority.

The benefits which the Commission has identified as potentially arising from BPP are vitally dependent on the implementation of these three measures. If these steps are not taken, those benefits will evaporate, and -- given the

not insignificant costs of BPP implementation^{1/} -- this alone should lead to a decision not to proceed with BPP.

II. THE COMMISSION MUST REQUIRE PARITY BETWEEN CARRIER-ISSUED CALLING CARDS AND COMMERCIAL CREDIT AND CHARGE CARDS TO MAXIMIZE CONSUMER CHOICE AND ASSURE COMPLIANCE WITH INTERNATIONAL STANDARDS.

A number of carriers have asserted that BPP should not be implemented, at least initially, to permit 0+ and 0-callers to use commercial credit and charge cards to pay for calls. These commenters allege that implementing BPP to permit billing to commercial cards poses great technical difficulties, and claim that market demand for this aspect of BPP is slight. Most argue for putting off implementation of BPP for commercial cards indefinitely to some future

^{1/} As a general matter, American Express believes that the record as it stands is far from sufficient to enable the Commission to estimate in any reliable way the costs of implementing BPP and of providing and using it on an ongoing basis. Cost estimates of initial implementation vary wildly. See, e.g., NPRM at para. 25. Despite the Commission's express request for detailed estimates of the basis for these estimates, the initial comments in this proceeding provide virtually no substantiation for the numbers they put forward. This omission is critical -- for depending on which estimate is correct, BPP may turn out not to be cost-beneficial even if it includes the three measures described above. Moreover, if costs are not recovered in an appropriate way, the cost to individual users may be prohibitive. See generally MasterCard/VISA Comments at 17-18, 20. The Commission must not go forward without a much clearer grasp of these issues than it can possibly have on today's record. Moreover, the Commission must consider all types of costs: not only implementation costs, but also consumer costs, card-issuer costs -- and, if BPP is not implemented properly, costs due to reduced competition.

stage of development^{2/} and a few suggest that such implementation should never be required.^{3/}

Before addressing the carriers' complaints of technical difficulties, it is first appropriate to demolish their canard that the marketplace does not want the commercial card option. Today, the use of commercial charge and credit cards for billing telephone calls is already very large -- and is growing fast. MasterCard International Incorporated and VISA U.S.A. Inc. (Mastercard and VISA) described this success story at length in their joint comments filed herein (at 13-16). The Airports Association Council International - North America (AACI-NA) testifies to the importance to many travelers of the ability to use commercial credit and charge cards to make long distance calls at airports, and the base of equipment set up to serve this need which would be rendered obsolete by the implementation of BPP without allowing for the use of such cards. (Comments at 10.)

American Express's experience in this market further underscores the importance to consumers of this payment option. Today, American Express cardmembers may

^{2/} See, e.g., Comments of GTE Service Corporation (GTE) at 10; Ameritech Operating Companies (Ameritech) at 11; Southwestern Bell Telephone Company (Southwestern Bell) at 21.

^{3/} See, e.g., Comments of Pacific Bell and Nevada Bell (Pacific) at 16; BellSouth Telecommunications, Inc. (BellSouth) at 18-19.

make calls using its cards worldwide, under a variety of different arrangements, including:

- "Smart" cardreading telephones at airports and other public places;
- Arrangements with multiple major interexchange carriers whereby a caller who has reached the carrier's network (whether by 0+ calling for a telephone presubscribed to the carrier or by dialing the 10XXX access code) may charge a call to his or her American Express card simply by entering the card number with a touchtone phone at the prompt, or by giving the card number to an operator; similar arrangements with additional carriers are under development;
- An arrangement with MCI whereby MCI operators will accept the American Express card in payment for operated-assisted calls for enrolled members;
- The use of the American Express card to make various inbound calls from international locations under various Call USA-type offerings; and
- Enhanced services, such as foreign language assistance and fax services; these services are, of course, accessed through the network.

This virtually ubiquitous capability has proven a boon to American Express's cardmembers, who now use American Express cards to make millions of calls each year, and whose use continues to grow rapidly. With additional programs with major carriers due to roll out soon, growth is expected to accelerate.

The convenience of using the American Express card or other commercial card for many customers is manifest.^{4/} Many customers use credit card billings to facilitate budgeting and reconciliation, and to keep track of business expenses. These customers relish the ability to track all their expenses on a single monthly bill. Others habitually use one or more cards for personal use and others for business use and would like to be able to separate their personal from their business calls according to the same method. Finally, many customers who hold commercial cards undoubtedly appreciate the option of putting their 0+ and 0-calls on their commercial card(s) simply to have one fewer check to write at the end of each month.^{5/}

Faced with this marketplace reality, the dismissals by several carriers of the marketplace need for BPP for commercial cards cannot be credited. Viewed most creditably, they simply have not done their homework, for

^{4/} As suggested by AACI-NA, travelers make particularly high use of the commercial card option. This is indicated by the fact that airports and other travel-related locations have the highest number of "smart phones" designed expressly to facilitate the use of commercial cards.

^{5/} Conversely, as MasterCard and VISA point out, other customers are likely to take the opposite approach, preferring to associate differing primary carriers with each of several different commercial cards, thereby giving themselves a range of carrier choices, and enabling them to take advantage of dynamic price competition among carriers, without sacrificing the convenience of 0+ dialing. MasterCard/VISA Comments at 10.

they have cited no evidence whatever for their conclusions. Typical, indeed, is the submission of Pacific, whose entire presentation on this issue consists of the following two sentences:

The Commission seeks comment on how these types of cards would be handled in a BPP environment. At this point, technical obstacles and low consumer demand do not justify inclusion of these in the BPP design.

Comments at 16 (citation to NPRM omitted).

Viewed more cynically, these carriers' position seems designed to enhance their own position by frustrating the ability of callers to use non-carrier-issued cards to make calls conveniently. Indeed, in the case of at least one carrier -- Bell Atlantic -- this is made manifest by its position that the Commission should discourage or abolish 10XXX access upon the introduction of BPP, thereby widening the gulf between the convenience of BPP for carrier-issued cards and non-BPP access for other cards.^{6/}

Patently, the degree of market demand for commercial credit and charge cards as a payment mechanism for telephone mandates that this mechanism be built into BPP from the beginning, with full parity with other card

^{6/} Moreover, Bell Atlantic wants to improve its competitive position further by not even allowing line numbered based cards issued by non-LECs into the database. Comments at 9. This attitude is reminiscent of the bygone days when the predivestiture AT&T claimed veto power over the attachment of even a Hush-a-Phone to the network. See also Comments of Southern New England Telephone Company (SNET) at 6-7.

mechanisms. This means that commercial card users should not be required to dial any more digits, "prelimiters" or other special codes,^{1/} or experience any greater delays under BPP, than users of carrier-issued cards, to avoid compromising free consumer choices made in the marketplace.

As noted above, several carriers -- primarily LECs -- have asserted that unexplained "technical difficulties" exist which make it either impossible or inadvisable to build commercial card parity into BPP, at least in the initial stage of implementation. Again, these submissions are largely conclusory, such as Pacific's two word invocation of unnamed "technical obstacles" noted above. See also, e.g., Comments of Southwestern Bell at 21 ("[T]his potentially more involved functionality would likely delay the initial implementation of BPP."); GTE at 10 ("issues . . . are complex"); Ameritech at 11 ("complex issues" would cause delay). It is extremely doubtful that the "technical obstacles" cited by these LECs are as forbidding as they would have it appear. But even if addressing them would cause modest delay, the benefit to the marketplace and to

^{1/} Of course, to the extent that commercial card numbers frequently have 15 (American Express) or 16 (MasterCard and VISA) digits means that the entry of the card number itself will require slightly more time than the entry of the 10-digit card number and 4-digit PIN for a carrier-issued card, but this is no reason to compound the difference by requiring the user to dial five (for 10XXX), seven (for 950) or ten (for 800) digits merely to access interexchange carriers, or to use a "prelimiter" or other special code prior to inputting the user's card number.

the openness of the network would more than justify the delay.^{8/}

MasterCard and VISA have laid out in their comments a strong case for the proposition that implementing BPP in a manner that provides parity for commercial cards would pose no major technical difficulties. MasterCard/VISA Comments at 7-9. In particular, MasterCard and VISA show, technology exists today, with appropriate and non-burdensome software modifications to enable the LEC OSS to identify:

- RBOC-issued calling cards, whether line-number-based or RAO cards;
- IXC-issued Card Issuer Identifier (CIID) cards; and
- all ISO/ANSI numbering plan cards, including both carrier-issued 891 cards and commercial credit and charge cards.

Id. This straightforward blueprint for allowing lookup of commercial card issuer data plainly is more credible than

^{8/} In weighing the benefit against the delay, it is important to remember that the underlying purpose of the proposed implementation is to make life easier for consumers by establishing a uniform, easy-to-remember 0+ (and 0-) dialing and charging methodology. This purpose will be stunted to the extent that commercial card users' lives become harder. Leaving commercial card users out of BPP will increase their confusion in many cases. Thus, American Express cardmembers who now use their cards to charge AT&T calls as described above will have to remember that they cannot use 0+ dialing with their American Express card but must use other procedures.

the two-line (or two-word) invocations of "technical difficulties" with which the LECs avoid the issue.^{2/}

This is not to say that the scenario outlined by MasterCard and VISA is necessarily the preferred scenario, particularly from the point of view of cost. Specifically, the details of interconnection of the OSS with card-issuer databases must be studied to assure that BPP is available without the incurrence of prohibitive costs. Many of these issues in turn, are sub-issues of broader issues of implementation and of the costs, both internal and external of the service. As discussed above, the record is far from satisfactory on issues of cost and cost recovery. As the Commission begins to develop this information, it will need to obtain further input from interested parties to determine whether at some point the costs have begun to outweigh the benefits.

On one fundamental issue, however, the scenario put forth by MasterCard and VISA is clearly correct: It makes absolutely no sense to design software to perform lookups on carrier-issued cards without at the same time building in the capability to perform lookups on commercial

^{2/} Presumably the RBOCs will have more to say on this issue on reply. The Commission must probe all such allegations carefully, not only because they are obviously self-serving, but because technical implementation issues clearly affect implementation of BPP per se, and not just the inclusion of commercial cards. American Express reserves the right to respond to the RBOCs' technical submissions.

cards. As MasterCard and VISA point out, this would be the height of inefficiency. Comments at 19. What is more, it would constitute a wilful retreat from the notion that the network should become more rather than less compatible with international standards. As MasterCard and VISA discuss, both carrier-issued 891 calling cards and commercial credit and charge cards are each allocated their numbers according to the standards of the American National Standards Institute (ANSI) and the International Organization for Standardization (ISO). MasterCard/VISA Comments at 8 n. 12, 19. In fact, both 891 calling cards and commercial cards are merely specific instances of a single internationally standardized numbering plan promulgated by ISO. As a result, BPP processing of both types of cards should be essentially identical.

It would be perverse and dangerous to sacrifice international standards in favor of a vestigial proprietary Bell standard. But this would be the result of implementing a BPP system which would recognize the former but not the latter type of card. Such an implementation would artificially and arbitrarily close the network against full compliance with the national and international standards for these cards, which are designed to enable the speedy and uniform processing of all compliant cards in a wide variety of contexts.

The LECs, of course, would benefit from such a BPP. By requiring commercial card users to dial several extra digits, they would build in a competitive advantage for their own cards as customers' preferred billing mechanism. Indeed, this strategy is made even clearer by their treatment of other issues, such as Bell Atlantic's attempt to penalize 10XXX access dialers further, cited above. Another example is the resistance of several LECs to processing 14-digit line-number-based IXC-issued cards, a position which would reserve to the LECs alone the ability to use a customer's easy-to-remember telephone as the basis for their cards. See, e.g., Comments of Pacific at 16-17; Southern New England Telephone Company (SNET) at 6-7; BellSouth at 7-8.

In the long run, this new bottleneck would not only affect billing for basic transmission services. It could enable the LECs to exercise control over billing for such network-dependent services as videotex, home shopping and funds transfer, as well as LEC-provided cable television services. If the LECs are permitted now to diverge from internationally recognized standards, it will be much easier for them to maintain such control over billing mechanisms in the future, to the detriment of providers and customers for these and many other services.

The Commission must not countenance this attempt by certain LECs to hoard for themselves the potential

advance represented by BPP. All billing mechanisms -- including commercial credit and charge cards -- must be afforded fully equal status within BPP.

III. TO ACHIEVE ITS GOAL OF MINIMIZING CONSUMER CONFUSION, THE COMMISSION SHOULD REQUIRE THAT BPP IMPLEMENTATION BE UNIFORM NATIONWIDE AND THAT BPP BE IMPLEMENTED FOR INTERSTATE AND INTRASTATE CALLS ALIKE.

The policy goal that lies at the heart of this proceeding is to increase competition and consumer welfare by enabling consumers to choose the carrier who is to carry their telephone calls with the greatest dialing ease and the least confusion. NPRM at paras. 13-19. As a number of commenters have pointed out, BPP can achieve this end only if it is implemented on a flashcut basis -- or at worst within a very short window -- nationwide. The Commission tentatively agrees with this position. NPRM at para. 31. American Express endorses it wholeheartedly. Neither the Commission nor the commenters, however, have focused on an additional point: that the Commission's goal can be frustrated just as completely if the policies which govern BPP on an intrastate basis are different from those the Commission applies to interstate BPP. Accordingly, the Commission should preempt states from adopting inconsistent policies governing state BPP.

**A. Nationwide Uniformity Is A Sine Qua Non
Of A Cost-Beneficial Implementation of
BPP.**

Credit card calling has, over the course of the last several years, become the lifeline of millions of travelers. Legions of persons who spend time on the road, whether for business or personal reasons, use such calling services to keep in touch with home, office, clients and other persons. The purpose of this proceeding is to determine whether a cost-effective BPP framework can be established that will enable callers such as these to choose their carrier by the simple use of 0+ calling, with a minimum of inconvenience and with a maximum of certainty that they are in fact connected with the carrier they believe they have chosen.

For these users of credit card calling, a lack of uniformity is no better -- and arguably worse -- than no BPP at all. If there are differing regimes in differing geographic areas, callers who care which carrier they use will have three alternatives:

- (a) Memorize the calling procedures to reach the chosen carrier in each geographic area to which he or she travels, or remember to call the carrier in advance of every trip to inquire about procedures;
- (b) Use 10XXX, 950- or 800 access to the carrier for every call; or
- (c) Use 0+ calling as a first try and then hang up and use alternative (b) if not connected with the carrier of choice.

Of course, callers today already have alternatives (b) and (c), and alternative (a) does not exactly reduce levels of customer confusion or enhance the customer's certainty of being connected with the desired carrier.

Nonuniform BPP would accordingly be useless, to put it bluntly. Whether the cost is \$50 million or \$560 million, BPP would not be worth it under circumstances of nonuniformity. The Commission must require nationwide uniformity as an absolute prerequisite to going forward.

B. Consistency Between Interstate And Intrastate Calling Procedures Is Also Imperative, And Requires Preemption.

Mere horizontal uniformity, however, is not enough to assure that the goals of this proceeding are accomplished. A traveler who must memorize multiple intrastate dialing procedures is not significantly better off simply from having a uniform set of interstate procedures. The benefits of BPP are just as surely dissipated by this type of "vertical" nonuniformity as they would be by nonuniformity for interstate calls. A traveler should know that he or she can use 0+ dialing to reach his chosen carrier for intrastate calling as well as his chosen carrier for interstate calling, and not be thrown back to the presubscribed carrier.^{10/}

^{10/} This does not diminish the states' powers to determine what carriers are authorized to do business within the state, but merely assures the user of being able to use the 0+ mechanism to choose between authorized carriers
(continued...)

Even if technically possible,^{11/} the existence of dual systems of BPP is certain to confuse users profoundly, and this massive confusion fully justifies preemption. See, e.g., Telerent Leasing Corp., 45 F.C.C.2d 204 (1974); North Carolina Utilities Commission v. FCC, 537 F.2d 787 (4th Cir. 1976) ("NCUC I"), 552 F.2d 1036 (4th Cir. 1977) ("NCUC II").

Such confusion would be particularly deplorable here because the guiding principle of the Commission's policy goal is to enable the caller to connect with the carrier of his or her choice with a minimum of inconvenience or interference -- and in particular with a minimum of confusion. To the extent that such confusion is likely to virtually eliminate the value of BPP, that would patently harm the federal recognition that such service is in the public interest.

^{10/} (...continued)

in a state. For example, in states that have maintained monopolies for intraLATA services, the carrier would continue to be the monopoly carrier, but the customer would be assured of being able to use the same 0+ procedure and billing mechanism. The Commission has already noted that not all IXCs do business everywhere; the fact that they do not do intrastate or intraLATA business as a result of state regulation is merely a special case of that general fact.

^{11/} Indeed, divergent BPP systems may not be technically possible, in which case there would be an independent ground for pre-emption on that basis alone. American Express does not at this point possess the requisite technical information to take a position on this issue, however.

To be sure, the Commission must narrowly tailor any preemption to prevent only clear encroachments onto federal policy territory. The District of Columbia Circuit has recently formulated the test as follows:

FCC preemption of state regulation is . . . permissible when (1) the matter to be regulated has both interstate and intrastate aspects . . .; (2) FCC preemption is necessary to protect a valid federal regulatory objective . . .; and (3) state regulation would "negate[] the exercise by the FCC of its own lawful authority" because regulation of the interstate aspects of the matter cannot be "unbundled" from regulation of the intrastate aspects

Public Service Comm'n of Maryland v. FCC, 909 F.2d 1510, 1515 (D.C. Cir. 1990), quoting National Ass'n of Regulatory Utility Comm'rs v. FCC, 422, 429, 430 (D.C. Cir. 1989) (citations omitted).

Certainly it would appear that the instant situation is likely to satisfy these tests. Unless opponents of preemption can describe a technically feasible manner of accommodating differing state and federal procedures without causing severe customer confusion, the Commission will be fully within its power -- and should exercise that power -- to preempt inconsistent state regulation of intrastate BPP.


IV. CONCLUSION.

BPP is an idea of great promise, but realizing that promise -- and avoiding even greater dangers -- requires careful navigation by the Commission. A thorough

assessment of the true costs is necessary at the outset. But equally important is to design BPP in a manner that ensures that its benefits are realized. The three steps outlined herein -- full parity for commercial credit cards, nationwide uniform implementation, and preemption of inconsistent state policies -- are absolutely essential to meet this goal.

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